
STATUTORY INSTRUMENTS

2008 No. 2698

The Tribunal Procedure (Upper Tribunal) Rules 2008

PART 2

General powers and provisions

Delegation to staff

4.—(1) Staff appointed under section 40(1) of the 2007 Act (tribunal staff and services) may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Upper Tribunal.

(2) The approval referred to at paragraph (1) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(3) Within 14 days after the date on which the Upper Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may apply in writing to the Upper Tribunal for that decision to be considered afresh by a judge.

Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case;
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—

- (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or
- (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (l) suspend the effect of its own decision pending an appeal or review of that decision;
- (m) in an appeal, or an application for permission to appeal, against the decision of another tribunal, suspend the effect of that decision pending the determination of the application for permission to appeal, and any appeal;
- (n) require any other tribunal whose decision is the subject of proceedings before the Upper Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or the proceedings in that tribunal.

Procedure for applying for and giving directions

6.—(1) The Upper Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

- (a) by sending or delivering a written application to the Upper Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Upper Tribunal considers that there is good reason not to do so, the Upper Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Upper Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

Failure to comply with rules etc.

7.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Upper Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 8 (striking out a party's case); or
- (d) except in mental health cases, restricting a party's participation in the proceedings.

(3) Paragraph (4) applies where the First-tier Tribunal has referred to the Upper Tribunal a failure by a person to comply with a requirement imposed by the First-tier Tribunal—

- (a) to attend at any place for the purpose of giving evidence;
- (b) otherwise to make themselves available to give evidence;
- (c) to swear an oath in connection with the giving of evidence;
- (d) to give evidence as a witness;
- (e) to produce a document; or

(f) to facilitate the inspection of a document or any other thing (including any premises).

(4) The Upper Tribunal may exercise its power under section 25 of the 2007 Act (supplementary powers of the Upper Tribunal) in relation to such non-compliance as if the requirement had been imposed by the Upper Tribunal.

Striking out a party's case

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant or applicant has failed to comply with a direction that stated that failure by the appellant or applicant to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Upper Tribunal must strike out the whole or a part of the proceedings if the Upper Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Upper Tribunal may strike out the whole or a part of the proceedings if—

- (a) the appellant or applicant has failed to comply with a direction which stated that failure by the appellant or applicant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant or applicant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly and justly; or
- (c) in proceedings which are not an appeal from the decision of another tribunal or judicial review proceedings, the Upper Tribunal considers there is no reasonable prospect of the appellant's or the applicant's case, or part of it, succeeding.

(4) The Upper Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant or applicant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings have been struck out under paragraph (1) or (3)(a), the appellant or applicant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Upper Tribunal within 1 month after the date on which the Upper Tribunal sent notification of the striking out to the appellant or applicant.

(7) This rule applies to a respondent as it applies to an appellant or applicant except that—

- (a) a reference to the striking out of the proceedings is to be read as a reference to the barring of the respondent from taking further part in the proceedings; and
- (b) a reference to an application for the reinstatement of proceedings which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Upper Tribunal need not consider any response or other submission made by that respondent.

Substitution and addition of parties

9.—(1) The Upper Tribunal may give a direction substituting a party if—

- (a) the wrong person has been named as a party; or

- (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.
- (2) The Upper Tribunal may give a direction adding a person to the proceedings as a respondent or, in judicial review proceedings, as an interested party.
- (3) If the Upper Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

Orders for costs

- 10.**—(1) The Upper Tribunal may not make an order in respect of costs (or, in Scotland, expenses) except—
- (a) in proceedings on appeal from another tribunal, to the extent and in the circumstances that the other tribunal had the power to make an order in respect of costs (or, in Scotland, expenses); or
 - (b) in proceedings other than on appeal from another tribunal or under section 4 of the Forfeiture Act 1982(1)—
 - (i) under section 29(4) of the 2007 Act (wasted costs); or
 - (ii) if the Upper Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.
- (2) The Upper Tribunal may make an order for costs (or, in Scotland, expenses) on an application or on its own initiative.
- (3) A person making an application for an order under paragraph (1) must—
- (a) send or deliver a written application to the Upper Tribunal and to the person against whom it is proposed that the order be made; and
 - (b) send or deliver a schedule of the costs or expenses claimed with the application.
- (4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Upper Tribunal sends the decision notice recording the decision which finally disposes of all issues in the proceedings.
- (5) The Upper Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first—
- (a) giving that person an opportunity to make representations; and
 - (b) if the paying person is an individual, considering that person’s financial means.
- (6) The amount of costs to be paid under an order under paragraph (1) may be ascertained by—
- (a) summary assessment by the Upper Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (“the receiving person”); or
 - (c) assessment of the whole or a specified part of the costs (or, in Scotland, expenses) incurred by the receiving person, if not agreed.
- (7) Following an order for assessment under paragraph (6)(c), the paying person or the receiving person may apply—
- (a) in England and Wales, to the High Court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998(2) on the standard basis or, if specified in the order, on the indemnity basis;

(1) 1982 c.34.

(2) S.I. 1998/3132.

- (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in the Court of Session; or
- (c) in Northern Ireland, to the High Court for the costs to be taxed.

Representatives

11.—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Upper Tribunal and to each other party written notice of the representative's name and address.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and
- (b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, subject to paragraph (8) and with the permission of the Upper Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a party under paragraph (5).

(7) In a mental health case if the patient has not appointed a representative the Upper Tribunal may appoint a legal representative for the patient where—

- (a) the patient has stated that they do not wish to conduct their own case or that they wish to be represented; or
- (b) the patient lacks the capacity to appoint a representative but the Upper Tribunal believes that it is in the patient's best interests for the patient to be represented.

(8) In a mental health case a party may not appoint as a representative, or be represented or assisted at a hearing by—

- (a) a person liable to be detained or subject to guardianship or after-care under supervision, or who is a community patient, under the Mental Health Act 1983; or
- (b) a person receiving treatment for mental disorder at the same hospital home as the patient.

Calculating time

12.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In a special educational needs case or a disability discrimination in schools case, the following days must not be counted when calculating the time by which an act must be done—

- (a) 25th December to 1st January inclusive; and
- (b) any day in August.

(4) Paragraph (3) does not apply where the Upper Tribunal directs that an act must be done by or on a specified date.

Sending and delivery of documents

13.—(1) Any document to be provided to the Upper Tribunal under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid post or delivered by hand to the address specified for the proceedings;
- (b) sent by fax to the number specified for the proceedings; or
- (c) sent or delivered by such other method as the Upper Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Upper Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Upper Tribunal or a party sends a document to a party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Upper Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Use of documents and information

14.—(1) The Upper Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified.

(2) The Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Upper Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Upper Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Upper Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be provided to the second party; and
- (b) provide to the Upper Tribunal the excluded document or information, and the reason for its exclusion, so that the Upper Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) The Upper Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) If the Upper Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Upper Tribunal may give a direction that the documents or information be disclosed to that representative if the Upper Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (6).

(6) Documents or information disclosed to a representative in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the Upper Tribunal's consent.

(7) Unless the Upper Tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public.

Evidence and submissions

15.—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Upper Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
- (f) the time at which any evidence or submissions are to be provided.

(2) The Upper Tribunal may—

- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair to admit the evidence.

(3) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Summoning or citation of witnesses and orders to answer questions or produce documents

16.—(1) On the application of a party or on its own initiative, the Upper Tribunal may—

- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
- (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons or citation under paragraph (1)(a) must—

- (a) give the person required to attend 14 days' notice of the hearing or such shorter period as the Upper Tribunal may direct; and
 - (b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay them.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.
- (4) A summons, citation or order under this rule must—
- (a) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it; and
 - (b) state the consequences of failure to comply with the summons, citation or order.

Withdrawal

- 17.—(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—
- (a) at any time before a hearing to consider the disposal of the proceedings (or, if the Upper Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Upper Tribunal a written notice of withdrawal; or
 - (b) orally at a hearing.
- (2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.
- (3) A party which has withdrawn its case may apply to the Upper Tribunal for the case to be reinstated.
- (4) An application under paragraph (3) must be made in writing and be received by the Upper Tribunal within 1 month after—
- (a) the date on which the Upper Tribunal received the notice under paragraph (1)(a); or
 - (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).
- (5) The Upper Tribunal must notify each party in writing of a withdrawal under this rule.

Notice of funding of legal services

18. If a party is granted funding of legal services at any time, that party must as soon as practicable—
- (a)
 - (i) if funding is granted by the Legal Services Commission or the Northern Ireland Legal Services Commission, send a copy of the funding notice to the Upper Tribunal; or
 - (ii) if funding is granted by the Scottish Legal Aid Board, send a copy of the legal aid certificate to the Upper Tribunal; and
 - (b) notify every other party in writing that funding has been granted.

Confidentiality in child support or child trust fund cases

- 19.—(1) Paragraph (3) applies to an appeal against a decision of the First-tier Tribunal in proceedings under the Child Support Act 1991(3) in the circumstances described in paragraph (2), other than an appeal against a reduced benefit decision (as defined in section 46(10)(b) of the Child

Support Act 1991, as that section had effect prior to the commencement of section 15(b) of the Child Maintenance and Other Payments Act 2008(4)).

- (2) The circumstances referred to in paragraph (1) are that—
- (a) in the proceedings in the First-tier Tribunal in respect of which the appeal has been brought, there was an obligation to keep a person’s address confidential; or
 - (b) a person whose circumstances are relevant to the proceedings would like their address (or, in the case of the person with care of the child, the child’s address) to be kept confidential and has given notice to that effect—
 - (i) to the Upper Tribunal in an application for permission to appeal or notice of appeal;
 - (ii) to the Upper Tribunal within 1 month after an enquiry by the Upper Tribunal; or
 - (iii) to the Secretary of State, the Child Maintenance and Enforcement Commission or the Upper Tribunal when notifying a change of address after proceedings have been started.

(3) Where this paragraph applies, the Secretary of State, the Child Maintenance and Enforcement Commission and the Upper Tribunal must take appropriate steps to secure the confidentiality of the address, and of any information which could reasonably be expected to enable a person to identify the address, to the extent that the address or that information is not already known to each other party.

(4) Paragraph (6) applies to an appeal against a decision of the First-tier Tribunal in proceedings under the Child Trust Funds Act 2004(5) in the circumstances described in paragraph (5).

- (5) The circumstances referred to in paragraph (4) are that—
- (a) in the proceedings in the First-tier Tribunal in respect of which the appeal has been brought, there was an obligation to keep a person’s address confidential; or
 - (b) a person whose circumstances are relevant to the proceedings would like their address (or, in the case of the person with care of the eligible child, the child’s address) to be kept confidential and has given notice to that effect—
 - (i) to the Upper Tribunal in an application for permission to appeal or notice of appeal;
 - (ii) to the Upper Tribunal within 1 month after an enquiry by the Upper Tribunal; or
 - (iii) to HMRC or the Upper Tribunal when notifying a change of address after proceedings have been started.

(6) Where this paragraph applies, HMRC and the Upper Tribunal must take appropriate steps to secure the confidentiality of the address, and of any information which could reasonably be expected to enable a person to identify the address, to the extent that the address or that information is not already known to each other party.

- (7) In this rule—
- “eligible child” has the meaning set out in section 2 of the Child Trust Funds Act 2004; and
 - “HMRC” means Her Majesty’s Revenue and Customs.

Power to pay expenses and allowances

20.—(1) In proceedings brought under section 4 of the Safeguarding Vulnerable Groups Act 2006(6) which are not an appeal from the decision of another tribunal or judicial review proceedings, the Secretary of State may pay such allowances for the purpose of or in connection with the attendance of persons at hearings as the Secretary of State may, with the consent of the Treasury, determine.

(4) 2008 c.6.
(5) 2004 c.6.
(6) 2006 c.47.

(2) Paragraph (3) applies to proceedings on appeal from a decision of—

- (a) the First-tier Tribunal in proceedings under the Child Support Act 1991, section 12 of the Social Security Act 1998⁽⁷⁾ or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000⁽⁸⁾;
- (b) the First-tier Tribunal in a war pensions and armed forces case (as defined in the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008⁽⁹⁾); or
- (c) a Pensions Appeal Tribunal for Scotland or Northern Ireland.

(3) The Lord Chancellor (or, in Scotland, the Secretary of State) may pay to any person who attends any hearing such travelling and other allowances, including compensation for loss of remunerative time, as the Lord Chancellor (or, in Scotland, the Secretary of State) may determine.

⁽⁷⁾ 1998 c.14.

⁽⁸⁾ 2000 c.19.

⁽⁹⁾ S.I. 2008/2686 (L. 14).